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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. ~~5750~~ 70-5014

PETER STANLEY, SR.,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF OF THE CHILD CARE ASSOCIATION OF ILLINOIS, INC., AMICUS CURIAE.

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INTEREST OF AMICUS CURIAE.

The Child Care Association of Illinois, Inc. ("Association") is an organization composed of individuals and of public and voluntary agencies concerned with child welfare in Illinois, including foster family placement and adoption programs.

The Association files this brief *amicus curiae,* with the consent of all parties, in support of the statutory scheme of custodial and adoption law relating to minors which exists in Illinois and under which many of the organizations which make up the membership of the Association operate on a daily basis.

From the beginnings of urban development in Illinois, both the State and voluntary not-for-profit organizations have concerned themselves with the care and custody of dependent and neglected children. The methods of charitable child care used have changed dramatically with the changes in society over the past years, particularly with the phenomenal surge in the adoption of children which came into full swing about a quarter century ago. Many children who formerly would have been permanent wards and occupants of an institution are now placed by the social agency with foster parents, who provide interim custodial care within an individual family setting, until the child can be matched with adoptive parents, who then become the legal parents of the child in every respect. There also remain several agencies which continue to operate institutional facilities for caring for the child pending its adoption.

Charitable adoption agencies who are members of the Association are licensed and qualified to be granted the legal custody of a dependent or neglected child with the right to place for adoption and thus have close contact with the administration of the laws pertinent to this case.

The complex of laws which make possible the present-day custodial and adoption system of child care could be inadvertently dealt a fatal blow by a decision in the instant case, concededly a hard case which should not make bad law. If the so-called "unwed father" is to be automatically accorded, next to the mother, rights tantamount to those held by her, including the right to consent to the custody and/or adoption of the child, then the whole legal system for the adoption of children, which has proved so beneficial to society as a whole, will be placed in serious jeopardy by the elements of delay and non-finality which will thereby be interjected into the underlying judicial process.

Therefore, the licensed social agencies in Illinois which specialize in child welfare and adoption, as well as the other organizations and professional persons who are members of the Association and whose general interest is in child welfare, have felt it essential that the Court be made aware of the broader context and impact of this case which might easily be overlooked by reference only to the particular facts here or to the rather elliptical opinion below of the Illinois Supreme Court.

QUESTION PRESENTED.

Is a system of child welfare laws relating to custody and adoption constitutional, which does not accord the natural father who has failed to legitimatize and assume legal responsibility for his child absolute preferential right to custody, after the mother, and the attendant right to consent to custody and/or adoption, but which provides full opportunity for the natural father who has had any known contact with or interest in the child to prove that the best interests of the child are served under the particular circumstances of the given case by granting him custody and the right to adopt?

STATEMENT OF THE CASE.

The facts of the case are adequately stated in the Petitioner's brief, but we believe that a condensed version of the Illinois statutory provisions particularly involved would be helpful to the Court. Therefore, we have made such an arrangement of the pertinent statutory language in Appendix I hereto, italicizing those phrases which are of particular relevance to the text of the Argument, *infra*.

ARGUMENT.

I.

THE ILLINOIS LAW, IN GRANTING CUSTODY AND THE RIGHT TO ADOPT, GIVES ADEQUATE RECOGNITION TO THE NATURAL FATHER WHO HAS ASSUMED DE FACTO RESPONSIBILITY FOR HIS ILLEGITIMATE CHILDREN, AND THE NATURAL FATHER IS GUARANTEED FULL HEARING IN CONNECTION THEREWITH, IF HE SO DESIRES. THIS SATISFIES THE REQUIREMENTS OF DUE PROCESS.

The Illinois statutory scheme fully satisfies due process, which we believe to be the only real constitutional issue present here—since the classification between fathers who have and who have not assumed legal responsibility for their children is, insofar as equal protection is concerned, a patently reasonable one. (Point II, *infra.*) See *Labine* v. *Vincent,* decided 3/29/71, 39 U. S. Law Week (Sup. Ct.) 4344, 4346, where this Court also said:

> "The power to make rules to establish, protect, and strengthen family life . . . is committed by the Constitution of the United States and the People of Louisiana to the legislature of that state."

The Illinois statutes afford petitioner a meaningful opportunity to be heard in connection with the status of his basic family relationships and are, in all events, valid as a whole even if it were to be conceded—which is not the case—that they might be invalid in their application to this particular petitioner. *Boddie* v. *Connecticut,* decided 3/2/71, 39 U. S. Law Week (Sup. Ct.) 4294, 4295, 4296.

The pertinent statutory complex gives the right to custody of the illegitimate child to the mother during her life, unless she so neglects the child as to be deemed unfit. Upon

the cessation of her custody, the Illinois law allows the natural father, the State, or any other person, whether related to the child or not, to file a petition and be heard on the question of who shall have custody of the child. If the natural father has in the past assumed sufficient familial responsibility and is aware of the situation, he will certainly file a petition, particularly if someone is attempting to remove the child from him. This would be true not only of the natural father, but any other non-related person who has had long custodial ties to a child, whether it be a step-parent or good friend. The natural father is placed, under such circumstances, in the first category of mention for the award of custody, and his position is further fortified by the provision which requires that the wishes of the child be given appropriate weight and consideration. The natural father, given custody under an order also granting the right to consent to adoption by himself, can then, with no further investigation required by law, legitimatize his children by an adoption proceeding which is strictly confidential and which also results in the substitution of a new birth certificate of public record for the child.*

Petitioner, having a most appealing (and unusual) set of facts, seeks to impugn the reasonableness and even-handedness of the above statutory scheme by simply assuming that in practice the law will be administered adversely to him at every turn. This is entirely unwarranted speculation, and the chances are overwhelming that the long-standing familial relationship with his illegitimate children which Mr. Stanley has nurtured will be sedulously preserved by the Juvenile Court, not broken up in the senseless fashion which petitioner would have one believe characterizes the judicial administration of the Illinois child welfare laws. Any seeming preliminary hesitation

* Single person adoptions have increasingly been encouraged by the social agencies and the courts in recent years.

on the part of the Juvenile Court in reaching this result in the present case must have reflected the existence of factors other than purely legal or economic ones which are not apparent on the face of the record as it presently stands.

Nor would any responsible agency seek any different result, for who would want to try to adopt children out of the kind of family situation which petitioner's counsel postulates as existing in this particular case? No social worker would seek to break up a family complex such as petitioner presents here and, for children of essentially unadoptable age, seek foster parents other than those the natural father had already resorted to on his own initiative. Any other result of the court proceedings would, indeed, be reversible error. The only possible open question in the entire above complex of laws has now been settled by the opinion below: The exclusion of the natural father from custody, under Section 12 of the Paternity Act, is not only limited to a situation where the mother is alive and files suit for support (for only she can institute the complaint making the charges or allegations required before that section is operative) but, also, it proscribes only that claim to custody which is made simply on the basis that custody is a necessary concomitant to the paying of child support. (App. 32-3.)

Thus what petitioner argues here is not constitutional fault in the Illinois law, but simply presumed error in its application by the Juvenile Court. (*Gryger* v. *Burke*, 334 U. S. 728, 731; *American Express Co.* v. *Kentucky*, 273 U. S. 269, 273; *Central Land Co.* v. *Laidley*, 159 U. S. 103, 112. Cf. *Evans* v. *Abney*, 396 U. S. 435, 444, 446-7.)

There is a suggestion that because of the potential cost and effort to the natural father the Illinois law does not in fact provide him with a meaningful opportunity to utilize its provisions. It should be noted here that economic

status is in no sense a required statutory consideration in awarding custody in the first instance;* it is, moreover, specifically excluded from any consideration in taking away custody from the mother or from the natural father once he has been made legal guardian. In the Juvenile Court proceedings counsel will be appointed for the natural father if he so requests because of financial inability. Legal Aid and other organizations providing legal services to the poor handle Juvenile Court cases (as witness the instant case) and adoptions for those who cannot afford private counsel. As for court costs, which is a general problem not particularly associated with the matters at issue here, in cases of true indigency these can be waived. The General Rules of Practice of the Circuit Court of Cook County so provide, Rule 8.1. (See also, *Boddie* v. *Connecticut, supra.*) If petitioner does not qualify as indigent, he can consider that these costs are in lieu of the marriage license fees which he saved himself in failing to legitimatize his children the simple and direct way prior to the mother's death.

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* The Illinois Department of Children and Family Services is now expressly authorized by statute to subsidize certain adoptive families in order to ease economic deterrents to the adoption of hard to place children. Illinois Revised Statutes, Chapter 23, "Charities," Section 5005 (Public Act 76-1683, Act of August 16, 1968).

II.

IT IS NOT UNFAIR OR DISCRIMINATORY IN ANY CONSTITUTIONAL SENSE NOT TO ACCORD AN ABSOLUTE RIGHT TO CUSTODY, AFTER THE MOTHER, TO ANY NATURAL FATHER WHO HAS FAILED TO LEGITIMATIZE HIS CHILDREN AND THUS ASSUME ANY LEGAL RESPONSIBILITY FOR THEM.

If we assume here that the petitioner in this particular case is, in the words of his counsel, a "good, suitable, interested unwed father", whose concern, past and present, makes him "readily identifiable" as a proper party to any custody or adoption proceedings, then the State court will certainly recognize any initiative petitioner may take in respect to the custody of the children. Those same facts also give him, as we have seen, the undoubted ability to establish in such judicial proceedings his claim to the custody of his children and, should he finally deign to legitimatize them and to assume the entire legal responsibility for them, his right to adopt them.

But this is not enough for petitioner. His argument is that it is constitutionally necessary for Illinois law *either* (1) to declare that biological status *per se* gives all "unwed fathers" (for all such, responsible or not, have the same biological relationship) an automatic right to custody, next to the mother; *or* (2), failing that, at least to establish by general legislative act (rather than determine by particular judicial decision) the criteria of a "responsible" unwed father* and to accord to such persons an automatic right to custody, without more, after the mother.

Such an absolute right to custody in the natural father would impinge seriously on important State public policy

* We prefer the term "natural father", since a substantial number of "unwed fathers" are married (to women other than the mother of their illegitimate children).

in the child welfare field and is not required, as against these strong State interests, by either constitutional or "natural" law, so long as the natural father who has real concern for his illegitimate child is accorded—as he is in Illinois—a meaningful opportunity to translate this concern into a responsible legal relationship of custody and/or legitimatization by adoption.

In the first place, there is nothing invidious or unfair about treating as a "legal stranger" to his child, to use petitioner's phrase, every natural father who has failed, wilfully or not, to legitimatize his children during the lifetime of the mother. Every such natural father *is* a legal stranger to his child because he has assumed no legal responsibility toward the child. If proceedings under the Paternity Act have to be brought by the mother in order to force at least some financial responsibility from the natural father, the latter is hardly the interested, concerned person on whom petitioner builds his argument. Moreover, once the mother brings such an action, the entire question of the child's custody is opened up under the criteria of the Juvenile Court Act which, as we have seen, permits the natural father to establish his claim to the legal relationship of custody, except only that he cannot take custody from the mother if the only factor against her is her financial circumstances and that he cannot establish any right to custody in himself simply from the fact that a claim to support the child has been asserted against him in court.

A legitimate child is, by definition, one to whom there is a lawful, binding relationship. As long as a natural father has assumed no responsible legal relationship because of his own fault, that is, because disabled by his own initial situation (himself married and/or the woman he has relations with married) or by his own refusal to act (to marry the mother or, if sued by her for Paternity Act support, to claim custody), there can be nothing wrong in

the law treating him as just what he has made himself—one who has no absolute *per se* legal relationship with the child. *Labine* v. *Vincent,* decided 3/29/71, 39 U. S. Law Week (Sup. Ct.) 4344, 4346. The discriminatory disadvantage claimed in the case at bar is to the natural father. We are not dealing with a situation where the illegitimate child, as such, is the person discriminated against, even though powerless to have prevented or to remedy his or her disadvantaged situation. Cf. *Labine* v. *Vincent,* 39 U. S. Law Week, at p. 4352 (dissenting opinion).*

There is, after all, a legitimate public interest in the institution of marriage and in the rearing of children within the legally-binding family unit. And there is also a legitimate State interest in encouraging the removal from helpless children of the stigma of illegitimacy which, if nothing else, confronts them each time there is a call for their birth certificate.

Secondly, the past public experience upon which the Illinois legislation is based is, beyond peradventure, that the vast majority of natural fathers are not only disinterested in their illegitimate offspring but, in fact, affirmatively try to avoid any "involvement" in the birth and rearing of the child. That this is the universal experience is attested to by the time-honored existence of paternity suits in every jurisdiction.

The general inability to identify or locate the putative father, and the possibility that some person who was not served with notice of judicial proceedings and who claims to be the father will show up at some subsequent time,

* Nor is the claim made here of an unlawful discrimination between the natural parents (as members of the basic class of persons having the same biological relationship to the child) because the mother is given priority in custody and the natural father can assume familial responsibility only at her discretion. The natural father has no rights while the mother is alive and has custody, so that no rights are taken away from him upon the mother's death—as some of petitioner's arguments might seem to imply.

make it imperative that the natural father not be accorded any absolute right to custody or to consent to the awarding of the custody or the adoption of the child. The uncertainties here are manifest and pervasive, and the possibilities —from *bona fide* custody fights rending the child's life asunder to out-and-out extortion—are so alarming as to have a seriously chilling effect on the now highly important social process of adopting children. This is much more than a question of "administrative convenience". The welfare of the neglected or dependent child demands not only expedition in placing the child in a stable family situation but also finality in the adoptive placement, once made. (See, *e.g.*, page 42 of Brief for the Petitioner.) Indeed, the need for a shorter cut-off date even for the mother to contest her consent to adoption is sparking legislation to this effect in several of the States where adoption is a major tool of child welfare administration.

It is thus quite erroneous, we submit, to suggest that the biological relationship of father constitutionally requires that natural fathers as a class be given an absolute right to custody—either equal to or second in the line of consent, so to speak, to the mother, in view of the devastating effect this would have on the entire public policy behind the adoption laws.

The exceptional unwed father, such as petitioner, is either known or will make himself known so that he is accorded a full opportunity for judicial determination of his natural, compelling claim to custody, which, as we have seen, the Illinois legislation leaves open to such a person. To require more legal recognition than this to the class of natural fathers who have failed to legitimatize their children accords with no principle of constitutional, natural or moral law and violates the dictates of history, important public policy and common sense. The standard must be

the welfare of the child in each individual case, and the determination of this—including any factors indicating that the natural father is appropriately "responsible" to be awarded custody—is surely best made by judicial decision. Legislation establishing the criteria for a "responsible" natural father is thus not only constitutionally uncalled for, but is likely to impart standardized restrictions which the judicial process alone can avoid.

Illinois has a carefully worked-out procedure for promoting the welfare of children by orderly custody and adoption proceedings which provide a genuine opportunity for the special claim of the natural father to be accorded due recognition. Any additional grant of automatic or absolute custodial rights to the natural father will introduce an element of uncertainty which we believe will cripple, if not kill, the entire State system of child welfare laws as developed to date.

CONCLUSION.

For the foregoing reasons it is urged that in deciding this case this Court should be careful to preserve to the State of Illinois its essential legislative scheme for child welfare, as the operation of that legislation is outlined hereinabove in this Brief.

Respectfully submitted,

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APPENDIX I.

CONDENSED VERSION OF ILLINOIS STATUTORY PROVISIONS INVOLVED HEREIN.

Illegitimacy.

". . . All marriages commonly known as 'common law marriages' entered into after June 30, 1905 are null and void . . . And *any children* born to parties who have entered in to such common law marriage *shall be and are deemed legitimate upon the parents having obtained a license to marry and are married* in the manner provided in this Act." (Illinois Revised Statutes, Chapter 89, "Marriage", Section 4; Act of 1905.)

"The intestate real and personal estate of a resident decedent who was illegitimate at the time of death . . . descends and shall be distributed as follows: [to spouse and/or children; if none, to mother and/or her descendants; if none, to maternal grandparents and/or their descendants; if none, to the nearest kindred of the mother; if none, the property escheats].

An illegitimate is heir of his mother and any maternal ancestor, and of any person from whom his mother might have inherited if living. And the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. An illegitimate child whose patents intermarry and who is acknowledged by the father as the father's child shall be considered legitimate." (Illinois Revised Statutes, Chapter 3, "Administration of Estates", § 12; Act of 1872.)

Paternity.

"A proceeding to establish the paternity of a child born out of wedlock and to establish and enforce liability for its support, maintenance, education and welfare *shall be instituted in the circuit court . . . only on the filing of a complaint in writing by the mother of a child* born out of wedlock or by a woman who is pregnant with child, which, if born alive, may be born out of wedlock, accusing under oath or affirmation, a person with being the father of such child." (Illinois Revised Statutes, Chapter 106¾, "Paternity", § 51; Act of 1872, as amended.)

"Upon the filing of a complaint under this Act, the child involved therein shall be considered a 'dependent minor' within the meaning of Section 2-5 of the 'Juvenile Court Act'* . . .

"*The court may in such action* to determine paternity and liability for support *provide for the guardianship of the child in the mother or in any other person or institution as authorized by that Act.*" (Ill. Rev. Stats., Ch. 106¾, § 61; Act of July 5, 1957.)

"*A person charged or alleged to be the father* of a child born out of wedlock, whether or not adjudicated the father under this Act, shall have no right to the custody or control of the child except such custody as may be granted pursuant to an adoption proceeding initiated by him for that purpose."** (Illinois Revised Statutes, Ch. 106¾, § 62; Act of July 5, 1957.)

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* Ill. Rev. Stats., Ch. 37, § 702-5. See *infra*.

** Between 1872 and 1949 the putative father was stated not to have the right to custody or control of a child under 10 years of age, "if the mother is living and wishes to retain such custody and control", unless the father proved, in a suit to which the mother was a party, "that said mother is not a suitable person . . ."

Between 1949 and 1957 this section simply provided that "The reputed father of a bastard child have no right to the custody or control of such child."

Dependent or Neglected Child.

"... When any child . . ., under the age of one year, shall be wilfully abandoned by its parents and shall be taken and cared for by any charitable institution in this state . . . such parents . . . shall thenceforth lose all their right, control and authority over said child . . . [which] shall thereupon become vested in said institution . . .

In case of illegitimate children . . . an abandonment by the mother of any such child shall be deemed an abandonment by its parents, according to the provisions of this act." (Illinois Revised Statutes, Ch. 58, "Foundlings", §§ 1, 3; Act of March 7, 1872.)

"This Act shall be known . . . as the Juvenile Court Act."

"The purpose of this Act is to secure for each minor subject hereto such care and guidance . . . as will serve the moral, emotional, mental and physical welfare of the minor and the best interests of the community . . . In all proceedings under this Act the court may direct the course thereof so as promptly . . . to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern . . . [and] shall be liberally construed to carry out the foregoing purpose and policy". (Illinois Revised Statutes, Chapter 37, "Courts", Sections 1 and 2; Act of August 5, 1965.)

" 'Agency' means a public or private child care facility legally authorized or licensed by this State for placement or institutional care or for both placement and institutional care . . .

" 'Parents' means the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, and includes any adoptive parent. It

does not include a parent whose rights in respect of the minor have been terminated in any manner provided by law." (Ill. Rev. Stats., Ch. 37, §§ 701-6, 701-14.)

"Except as provided in this Section and paragraph (2) of Section 5-1, the minor who is the subject of the proceeding and his parents, guardian, legal custodian *or responsible relative* who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel. *At the request of any party financially unable to employ counsel, the Court shall appoint counsel.*" (Ill. Rev. Stats., Ch. 37, § 701-20.)

"Those who are dependent include any minor under 18 years of age (a) who is without a parent, guardian or custodian . . .". (Ill. Rev. Stats., Ch. 37, § 702-5(1).)

"(1) If the court finds the parents, *guardian or legal custodian* of a minor adjudged a ward of the court are unfit or are unable, *for some reason other than financial circumstances alone,* to care for, protect, train, discipline the minor or are unwilling to do so, and that it is in the best interests of the minor to take him from the custody of his parents, *guardian or custodian,* the court may

(a) place him in the custody of *a suitable relative or other person;*

(b) [under the guardianship of a probation officer);

(c) [to an agency for care or placement];

(d) [to some licensed training school]; . . .

(f) [to the State Department of Children and Family Services].

(2) When making such placement, the Court, whenever possible, shall select a person holding the same religious belief as that of the minor . . . whenever alternative plans for placement are available, *the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor.*

(3) When a minor is placed with a *suitable relative* or other person, *the court shall appoint him the legal custodian or guardian* of the person of the minor . . .". (Ill. Rev. Stats., Ch. 37, § 705-7.)

"The Court *may* require any legal custodian or guardian of the person appointed under this Act to report periodically to the court . . .". (Ill. Rev. Stats., Ch. 37, § 705-8.)

". . . The court . . . *may empower the guardian of the person of the minor, in the order appointing him as such guardian,* to appear in court where any proceedings for the adoption of the minor may at any time be pending and *to consent to the adoption.*" (Ill. Rev. Stats., Ch. 37, § 705-9(2).)

Adoption.

" *Such investigation* [of the background and suitability of the pending adoption] *shall not be made* when the petition seeks to adopt *a related child* or an adult unless the court, in its discretion, shall so order." (Illinois Revised Statutes, Chapter 4, "Adoption", Section 9.1-6; Act of July 17, 1959.)

". . . Where consents are required in the case of an adoption of a child, the consents of the following persons shall be sufficient:

(a) The parents; or

(b) *The legal guardian of the person of the child,* if there is no surviving parent.

* * * * *

The consent shall not be required from the father of an illegitimate child, nor shall the consent of the father of an illegitimate child be required after marriage of the father to the mother of an illegitimate child, where consent to the adoption has been given by the mother prior to the marriage, nor shall consent be required from the father of an illegitimate child notwithstanding that the father of such child has been ordered to support such child in accordance with the provisions of the Paternity Act."* (Ill. Rev. Stats., Ch. 4, § 9.1-8.)

"The word 'illegitimate' or the words 'born out of wedlock', or words imparting such meaning shall not be used in any adoption proceeding in any respect.

Upon motion of any party to an adoption proceeding *the court shall,* or upon the court's own motion the court may, *order that the file relating to such proceeding shall be impounded . . .*" (Ill. Rev. Stats., Ch. 4, § 9.1-18.)

"No attack upon or proceeding contesting the validity of an adoption decree heretofore entered shall be made either directly or collaterally because of the failure to serve notice on or to give notice to the reputed father, unless such attack or proceedings shall be instituted within one year after the effective date of this Act." (Illinois Revised Statutes, Ch. 4, § 10-1; Act of August 3, 1949.)

"(1) For a person born in this State, the State Registrar of Vital Records *shall establish a new certificate of birth* when he receives any of the following:

(a) *a certificate of adoption . . . or a certified copy of the decree of adoption . . .*

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* This last paragraph was a specific addition made in the new Adoption Act of 1959.

(2) When a new certificate of birth is established, . . . it shall be substituted for the original certificate of birth . . . [and] . . .

(4) . . . all copies of the original certificate of birth shall be sealed from inspection." (Illinois Revised Statutes, Chapter 111½, "Public Health"; § 73-17; Vital Records Act of August 8, 1961.)

Poor Persons.

"8.1 Application for Leave to Proceed as a Poor Person.

(a) Contents. An application for leave to sue or defend as a poor person shall be in writing and supported by the affidavit of the applicant or, if the applicant is a minor or an incompetent, by the affidavit of some other person having knowledge of the facts, stating:

(i) the applicant's occupation or means of subsistence;

(ii) the applicant's income for the year preceding the application;

(iii) the source and amount of any income expected by the applicant;

(iv) the nature and value of any property, real or personal, owned by the applicant;

(v) the particulars of all applications for leave to sue or defend as a poor person made by the applicant or on his behalf during the year preceding the application;

(vi) that the applicant is unable to pay the costs of the suit; and

(vii) that the applicant has a meritorious claim or defense.

(b) Ruling. If the application is denied, the court shall endorse the fact of denial on the application. *If the application is granted, the court shall enter an order allowing the applicant to sue or defend as a poor person.*"

(Rules of the Circuit Court of Cook County, Illinois).